

Before the
United States Senate Committee
on Indian Affairs

Statement of

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September 17, 1996

Thank you for the opportunity to appear here today. My name is Joe Kalt. I am the Ford Foundation Professor of International Political Economy at Harvard University's Kennedy School of Government. I am also the Co-Director of the Harvard Project on American Indian Economic Development. Along with my colleagues, Prof. Steve Cornell of the University of California at San Diego and Manley Begay at the Graduate School of Education at Harvard, we at the Harvard Project have been working for almost ten years for and with tribes and tribal organizations. Our primary objectives have been to try to get a handle on what is working in Indian Country when it comes to sustained economic development and socially successful reservations, and to support tribal leaders' efforts to put workable policies and practices into place. In partnership with the College of Business at Northern Arizona University, we also have set up the National Executive Education Program for Native American Leadership, which is designed to address the strategic challenges of senior tribal leadership as they try to build self-sustaining economies and communities.

It goes without saying that the problems of poverty and its related social consequences are severe among the nation's Native American population. In the last Census, American Indians on reservations were the poorest group in the United States. Unemployment on reservations commonly exceeds 50%, and in some places real joblessness pushes above 90%. On reservations such as Northern Cheyenne in Montana or Rosebud Sioux in South Dakota, the economy subsists overwhelmingly on governmental transfer payments. Indicators of social well-being, from suicide to tuberculosis, are also discouraging in their seriousness.

This kind of litany of economic and social conditions is familiar in these chambers. But while figures on average living conditions in Indian Country are familiar, they mask important lessons being put together by successful tribes. Even apart from the dozen or

so gaming tribes that the press is so fond of focusing on at this time, there are a number of reservations that are sustaining growing economies and breaking the cycles of dependence on federal programs. Mississippi Choctaw, for example, is now the fourth or fifth largest employer in Mississippi. More than a thousand non-Indians migrate *onto* the reservation every day in order to work in the Choctaw's manufacturing, service, and public sector enterprises. At Fort Apache in my home state of Arizona, the White Mountain Apache Tribe's forest products, skiing, recreation, and other enterprises make it the economic anchor of the economy of northern Arizona. In Montana, the Salish and Kootenai Tribes of the Flathead reservation have successfully fostered a strong private sector economy based on agriculture, tourism, and recreation. Unemployment is lower than the rest of rural Montana, and business owners report that the economic problem they face is finding enough qualified workers.

There are many stories of this kind across the nation. What is it that accounts for successful economic development when it occurs in Indian Country? Our research turns up a very consistent pattern. First, let me address what does *not* explain why some reservations sustain reasonably healthy economies and so many do not. Simply having resources—natural, human, or financial—does not account for what the relatively successful tribes have been able to achieve.¹ It is *not* the case that relatively successful tribes are those that have good natural resources, or that have high rates of educational attainment, or that have been able to get their hands on financial capital.

To be sure, more resources are better than fewer resources. But just having resources is not *the* key—or even *a* key—to getting a reservation economy going. The Crow Tribe of Montana may have the richest natural resource endowment of any tribe, with huge coal resources, extensive timber supplies, rich wheat-growing land, and arguably the best grazing grass in the West. Crow also has experienced significant infusions of capital, through both federal and state programs, and through a number of large monetary settlements totaling well over 100 million dollars in the last decade. And education at Crow gives it a rate of high school graduation that is well above the national reservation average. Yet, official unemployment at Crow is almost 60% and real unemployment is probably over 89%. On the other hand, the home of Mississippi Choctaw, centered at Philadelphia, Mississippi, is hardly rich in natural resources, and the economic development that has taken place took root before the sharp improvements that the Tribe has made in its educational system in recent years.

If resources are not the key to economic development in Indian Country, what are the keys? The relatively successful tribes in the U.S. all have three indispensable ingredients in common. These are: (1) sovereignty, (2) capable governments, and (3) a match between the type of government a tribe has and that tribe's cultural norms regarding legitimate political power. Let's look at each of these factors.

¹ See Stephen Cornell and Joseph Kalt, "Where's the Glue? Institutional Bases of American Indian Economic Development," Harvard Project on American Indian Economic Development, Project Report Series, John F. Kennedy School of Government, Harvard University, 1990.

Sovereignty: *De facto* sovereignty is a necessary prerequisite for economic development on America's Indian reservations. By "de facto" sovereignty I mean genuine decision-making control over the running of tribal affairs and the use of tribal resources. Who is really deciding how many trees get cut? Who is really deciding how the housing money will be spent? Who is really deciding whether the joint venture will be struck with the outside investor? When the answer to these questions is "the Tribe," *de facto* sovereignty is being exercised.

While the legal status of Indian sovereignty waxes and wanes with federal court decisions and legislation, it is still the case that an assertive and capable tribe can take primary control of many economic decisions away from the leading contenders for such power—state governments, the Bureau of Indian Affairs, and other federal agencies. In case after case where we see sustained economic development, from Flathead and Mescalero Apache reservations to Cochiti Pueblo and Mississippi Choctaw, tribal decisionmaking has effectively replaced BIA (as well as other "outside") decisionmaking. We cannot find a single case of sustained economic development where the tribe is not in the driver's seat. While the resulting relationships between tribe and BIA range from the cooperative to the contentious, they are characterized by a demotion of the BIA's role (and the role of other governmental agencies) from decisionmaker to advisor and provider of technical assistance.

The reason why tribal sovereignty is so crucial to successful development is clear. As long as the BIA or some other outside organization carries primary responsibility for economic conditions on Indian reservations, development decisions will tend to reflect outsiders' agendas. In the case of the BIA, for example, bureaucratic standards of success (protecting a budget, expanding authority) will tend to be given more weight than tribal standards of success. But when BIA or other federal decisions lead to lost opportunities or wasted resources, the costs are borne most directly by the affected tribe, not by the federal bureaucracy.

Consider the hard evidence on the P.L. 638 program, which enables tribes to take over management from federal agents. In an important study for our Project, Prof. Matthew Krepps of MIT's Sloan School of Management has analyzed the performance in the marketplace of 49 tribes that have opted to replace the BIA with their own management of their forest products industries under P.L. 638.² The hard statistical evidence indicates that for each high skilled position that is transferred from BIA forestry to tribal forestry, productivity is increased by 38,000 board feet of timber output, and the price received in the marketplace for that output rises by 4.5%. These are the kinds of improvements that the rest of corporate America would love to have. Tribes are getting them by exercising their sovereignty.

² Matthew B. Krepps, "Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry" in Stephen Cornell and Joseph P. Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles: University of California, 1992).

The legal and *de facto* sovereignty of tribes has been subject to constant challenge, and it is frequently asserted that if tribes wish to be sovereign, they must first establish sound, non-dependent economies. Our research indicates that, for two basic reasons, this reasoning is backwards. First, as we have said, sovereignty brings with it accountability. Those whose resources and well-being are at stake are the ones in charge. Without this accountability, as in the years before self-determination became established federal policy in the 1970s, sustainable development on reservations was virtually non-existent. Second, the sovereign status of tribes offers distinct legal and economic market opportunities, from reduced tax and regulatory burdens for industry to unique niches for gaming and commercial use of wildlife.

If we look back on the history of federal Indian policy in the Twentieth Century, it is not a coincidence that it has only been in the era of self-determination that a significant number of reservations have begun to break the cycle of poverty and dependence. Sovereignty is one of the primary development resources tribes can have, and the reinforcement of tribal sovereignty under self-determination should be the central thrust of public policy. One of the quickest ways to bring development to a halt and prolong the impoverished conditions of reservations would be to further undermine the sovereignty of Indian tribes. We are aware that this is a very “pro-Indian” conclusion. But I must stress that it is a conclusion based on the evidence from case after case. There are no successful cases where federal planning and management has produced sustained economic development in Indian Country. The only thing that is working is self-determination—i.e., *de facto* sovereignty.

Capable Governments: As the exercise of recently-acquired sovereignty by the various countries in Eastern Europe is so forcefully demonstrating, sovereignty is not a guarantee of success. Once established, a tribe must be able to put its sovereignty to effective use. This requires more than simply aggressive decisionmaking. A tribe laying claim to the right of self-determination must be armed with capable institutions of self-governance. In Indian Country, as in developing societies around the world, such institutions are essential not only to the successful exercise of sovereignty; they are also the foundation on which economic development is built. A sovereign country or tribe can have all the resources in the world available to it, but those resources will be squandered if a capable government with sound economic policies is absent.

What is a capable government in Indian Country? As tribes set about achieving genuine self-government, the need is to put in place formal governing institutions that can perform three basic tasks: (1) efficiently make and carry out strategic choices and policies; (2) provide a political environment in which investors—large or small, tribal members or non-members—feel secure; and (3) mobilize and sustain the tribal community’s support for its institutions and for particular development strategies. These tasks must be performed both at the level of policy and group action (for example, the design of the reservation economic system and the making of rules and laws) and at the level of day-to-day bureaucratic functions (for example, program administration and law enforcement).

Decades of federal-tribe relations have left a legacy of *institutional* dependency. At too many reservations, the tribal government is little more than a grants-and-programs funnel attached to the federal apparatus. Such dependency is the antithesis of sovereignty and self-determination. The challenge is to break this dependency. To do so, a tribe must create laws, rules, and procedure of *its own* and *that can get things done* in the real world that self-determined tribes confront. Meeting these tests places a number of burdens on tribal governments.

No society of significant size can count solely on the goodwill of its leaders and citizens, or their spontaneous loyalty to shared cultural values, to hold the society together. This is especially true when people need to be held together across activities as diverse as investing public monies in schools, roads, or resource development; litigating, lobbying, or negotiating with other nations; and regulating, prohibiting, or penalizing various behaviors by the society's own members. Conflict of interest and opportunities for private advantage inherent in these activities cannot consistently be controlled simply by appeals to conscience or to essential or traditional "Japanese" or "American" or "German" or "Cherokee" or "Arapaho" or "Hopi" values. Sharing such values can be important in helping people to understand, sympathize, and identify with each other, and to recognize that there is, indeed, a public interest to be served, particularly in times of fundamental change (as, for example, during constitutional reform). But sustaining public spiritedness during the long, hard battles over defining and implementing the will of the people is a nearly impossible task.

For this reason, among others, human societies devise rules and procedures that delegate and delimit authority. From the orally-transmitted laws of the Iroquois Confederacy to Robert's Rules of Order to the theocracy at Cochiti Pueblo to the fish and game code of the White Mountain Apaches, formalized rules and procedures serve to *empower* a people by allowing them to carry forward the public's interest. In promoting government by law, such rules and procedures help to insulate the public interest from the possibility that individuals interested only in their own advantage on occasion will end up in positions of power.

As tribal governments make the transition from dependent "funnel" to real self-government, the need for formalized rules and procedures is amply evident. As they compete to attract and hold investments by both members and non-members, and as they seek to create an environment attractive to workers with plenty of off-reservations opportunities, tribes must have stable and effective political systems, and professional and efficient bureaucracies. The reforms needed vary from tribe to tribe, and range from complete constitutional overhaul and the institution of judicial standards to development of sound business codes and adoption of explicit rules of administrative procedure.

Effective tribal government and bureaucracy need be neither large nor elaborate, as the relatively effective systems at such places as Cochiti Pueblo and Muckleshoot illustrate. The point is not to build up some complicated set of bureaucratic offices or

elaborate staff, but to establish rules that consistently govern the way tribal affairs are handled, and to make certain those rules survive changes in leadership or other personnel. To do this, policies must be implemented through a process that clearly defines the rights and responsibilities of all affected parties: When can the tribal council overrule the land use office? When can public debate be cut off? What right of appeal do applicants have, and to whom? What is the power of the tribal council vis-à-vis the judiciary? The tribe that fails to answer these kinds of questions with clear and hard-to-change rules and laws invites the kind of conflict and instability that raises roadblocks to development.

To provide the foundation for economic development on a reservation, a tribal government must not only be efficient. It must also establish a political environment that is safe for investment and development. American Indian reservations compete with other localities to attract economic activity, including not only the activity of outside investors, but that of their own citizens.

The central problem is to create an environment in which investors—whether tribal members or outsiders—feel secure, and therefore are willing to put energy, time, and capital into the tribal economy. The successful tribes we see have solved, in one way or another, two critical aspects of this problem:

(1) The Separation of Politics from Day-to-Day Management: Tribal governments should play a critical role in tribes' strategic decision-making. It is appropriate that strategic decisions regarding the disposition of reservation resources and the character of reservation life be brought into the political arena. Turning a reservation mountainside into a ski resort or a mine, inviting IBM or the Department of Defense onto the reservation—these decisions rightly are topics for political debate.

This does not mean, however, that tribal governments should make all or even a significant number of the day-to-day business decisions on reservations. This is not always an easy pill for tribal governments—or any other governments—to swallow, particularly on reservations with tribally-owned businesses. After all, the enterprises are the property of the people; shouldn't the people's representatives—the politicians—have a direct say in how business is run? This argument can only be made to work in the short run. In the long run, inserting politics into day-to-day business decisions invariably undermines efficiency and productivity, saps the resources of the organizations, and runs enterprises into the ground.

In fact, a staple of story-telling in Indian Country has to do with political interference in business activity. Over and over one sees the cases of leases voided by tribal councils, hired or fired cousins, politicized management, and enterprises drained of funds by political interference. Such problems are not unique to Indian Country—witness Chicago or Boston, or the Philippines or Mexico, where the politics of patronage and personal enrichment have memorable histories. While the details vary across reservations and other societies, their consequences are depressingly similar: costs are raised and competitiveness is reduced; earnings are dissipated and capital is not replenished; investors

fear being held hostage to politics and turn away. In a highly competitive world, there simply is no cushion to absorb costs that are higher than they have to be, production that is less efficient than it can be, or quality that is lower than customers can find elsewhere.

Successful business enterprises in Indian Country, whether private or tribally-owned, are typically distinguished by the insulation of their day-to-day affairs from political interference. In those cases where there is a strong private sector on the reservation (such as at Flathead) an indispensable foundation is a capable, independent tribal judiciary that can uphold contracts, enforce stable business codes, settle disputes, and, in effect, protect businesses from politics. In fact, at Flathead, huge investments have been made in building its legal system and the rule of law, including an inter-tribal appeals court insulated from Flathead politics. This is arguably enabling Flathead to out-compete the state of Montana, which has its own political problems in maintaining an environment that can attract business capital and human resources.

Where businesses are tribally funded, it is more difficult to separate day-to-day enterprise management from politics, but the problem can—and must—be solved. Table 1 shows the results of a survey of the tribally-owned businesses of eighteen tribes. These tribes own a combined total of 73 enterprises, covering a wide range of sizes and activities, from agriculture to manufacturing. A total of 39 of these enterprises are identified by their respective tribal leaders as being insulated formally from tribal politics, typically by a managing board of directors and corporate charter beyond the direct control of individual council members and the tribal chair. Some of these enterprises have been operating profitably; others have been losing money. However, the odds that an independently-managed tribal enterprise is profitable are almost seven to one. On the other hand, the odds that a tribal enterprise that is *not* insulated from tribal politics is profitable are only 1.4 to 1.

Table 1

**Profitability of Tribal Enterprises in 18 Tribes:
Independent v. Council-Controlled Management**

	Independent	Council-Controlled
Profitable	34	20
Not Profitable	5	14
Odds of Profitability	6.8 to 1	1.4 to 1

Source: Self-reported survey of 18 tribal chairs participating in the National Executive Education Program for Native American Leadership.

(2) The Separation and Limitation of Powers. As the foregoing suggests, all societies face the problem of preventing those who exercise the legitimate powers of government from using that power to transfer wealth—or additional power—to themselves. The use of government for personal gain can take place either through direct (though often hidden) taking of funds or authority, or through the biasing of laws, rules, and regulations so as to favor the interests of those in authority. This activity is socially destructive. Where government is viewed largely as a source of power or wealth, many of a society's best and brightest people will devote their energy and talent to seeking government favors. But such investments of energy and talent add nothing to a society's productive output. In fact, they discourage productive investment: Investors will not step forward with their dollars or their energy if they suspect that their investment is going largely to the enrichment of other persons.

The problem is to limit the role of those in power to that of “third party” enforcer—the third party that referees and enforces the rules of the game—rather than a self-interested primary party in disputes and decisions over the use of a society's resources. Around the world, from the U.S. to Poland to the Philippines to Zaire, success at this task stands out as a make-or-break characteristic distinguishing those sovereign nations that have been able to develop economically from those that have not.³

This is as true in Indian Country as it is anywhere else. Too often, for example, those with claims against either the tribe or other tribal members can appeal only to the tribal council. Without constitutional checks and balances, such as an independent

³ See Douglass C. North, Institutions, Institutional Change and Economic Performance (Cambridge: Cambridge University Press, 1990), and for systematic evidence from Indian Country, Cornell and Kalt, “Where's the Glue...” *ibid.*

judiciary or a capable bureaucracy operated under sound administrative procedure, politicians are in a position to turn authority into personal power or gain. Such conditions discourage investment because potential claimants see little chance of fair adjudication of their claims.

For many tribes, the front-and-center issue in economic development is constitutional reform. Across Indian Country, the fundamental forms of government vary from the “general council” under which all adults are members of the tribal council (as at Crow), to the highly developed parliamentary system with independent judiciary (as at Flathead), to the traditional theocracies operating at a number of Pueblos. Of course, many tribes are saddled with the IRA governments that were effectively imposed upon them in the Roosevelt era. These tribal governments were modeled after civic group-style boards of directors, with a chair, a one-house legislature (council), and little or no provision for real judicial powers or other mechanisms of checks and balances.

The importance of governmental structures is borne out by available systematic evidence. In a study of 67 tribes for which comparable data are available, we found that tribes with constitutionally-based, strong chief executive (i.e., directly-elected, typically to four-year terms of office) and strong (parliamentary) legislature governments consistently outperform general council governments. Moreover, independent judiciaries promote economic well-being under all types of tribal executive and legislative systems. As shown in Table 2, after accounting for the influence of other factors that can affect development (such as natural resources, educational attainment, and local market conditions), strong chief executive governments outperform, to some degree, strong legislature governments. Both forms of government account for at least a ten percent improvement over general council systems. Independent judiciaries generally improve tribal employment by an additional five percent.

Table 2
Contributions of Alternative Government Forms
To Reservation Employment Levels

	General Council	Parliamentary System	Strong Chief Executive
No Independent Judiciary	—	10.8%	14.9%
Independent Judiciary	5.0%	15.8%	19.9%

Source: Cornell and Kalt, “Where’s the Glue...,” *ibid.* contributions at mean sample values. Contributions are measured relative to a reservation with a general council form of government, with no independent judiciary. All effects shown are statistically significant at the 90% level and above.

The implications for federal policy are clear—and they closely parallel the challenges we confront in Eastern Europe and with other emerging democracies. The first step on the road to sustained economic development in today’s world economy is fundamental governmental—constitutional—reform. Federal policy should make it a priority to support such reform in Indian Country. Such support should take the same government-to-government form being followed internationally, consisting of technical and educational assistance and facilitation of the process of reform—but not consisting of the imposition of a one-size-fits-all model that overrides tribes’ sovereignty.

Cultural Match: This last admonition is the lesson taught by the sad history of most tribes’ economic development under IRA constitutions. Constitutions and other fundamental reforms imposed from the outside are not likely—except by luck—to be legitimate in the eyes of the people of a nation. And illegitimate governments do not work. They are the seedbeds of corruption and social unrest. In fact, our research keeps turning up the result that the economies that are working in Indian Country are invariably standing on the shoulders of governmental structures that are matched to fundamental cultural definitions of political legitimacy.

It should not be surprising that relatively successful Mescalero and White Mountain Apache are able to get along under IRA constitutions characterized by a strong chief executive and one house legislature. Pre-reservation Apache government, too, was structured around strong chief executives, with the abilities to pick a council of vice-advisors and adjudicate legal disputes. Meanwhile, at Pine Ridge, the Oglala Lakota today struggle to operate under an IRA constitution that mirrors the Apaches’. Traditional Sioux government, however, was parliamentary, with a large council (*naca*) that appointed multiple executives and an independent judicial society (*akicita*).⁴

⁴ Stephen Cornell and Joseph P. Kalt, “Where Does Economic Development Really Come From? Constitutional Rule Among the Contemporary Sioux and Apache,” *Economic Inquiry*, July 1995.

As tribes set about constitutional reform, constitutions do not necessarily have to be written down, as the cases of the United Kingdom and Navajo demonstrate. Nor do they all have to look like the constitution described by my high school civics text. But they do have to match the cultural standards of legitimacy in each tribe if they are to work to promote tribes' economic, social, and political goals. As noted, the federal role cannot be to impose solutions; instead assistance and facilitation are the proper paths. After all, the most basic attribute of sovereignty must be the ability to design one's own systems of self-governance. Without this, sovereignty is a sham, as is a government-to-government relationship between tribes and the Federal Government.

At the same time, the requirement of "cultural match" is not a romantic blank check that says that tribes can or should reconstruct traditional government in their traditional forms. Tribes must equip themselves with the institutional tools that fit today's problems by building institutions that work for them. What is clear is that the successful tribes are and will be those that build capable governments and policies, and that the people best equipped to build such institutions are the tribes themselves. This brings us full circle back to the prerequisite of sovereignty.